

§ 548.303

29 CFR Ch. V (7-1-10 Edition)

The employee's average hourly earnings on job No. 2 may be used to compute his overtime pay.

(2) In this connection it should be noted that although the basic rate is obtained by averaging earnings over a period other than a workweek the number of overtime hours under the act must be determined on a workweek basis.

(c) In computing the basic rate under § 548.3(b), the employer may exclude from the computation the payments which he could exclude in computing the "regular" rate of pay.¹¹

[20 FR 5681, Aug. 6, 1955, as amended at 26 FR 7731, Aug. 18, 1961]

§ 548.303 Average earnings for each type of work.

(a) Section 548.3(c) authorizes as an established basic rate: "A rate per hour which is obtained by averaging the earnings, exclusive of payments described in paragraphs (1) through (7) of section 7(e) of the act, of the employee for each type of work performed during each workweek, or any other longer period not exceeding sixteen calendar days, for which such average is regularly computed under the agreement or understanding. Such a rate may be used to compute overtime compensation, during the particular period for which such average is computed, for all the overtime hours worked by the employee at the type of work for which the rate is obtained."

(b) Section 548.3(c) differs from § 548.3(b) in this way: Section 548.3(b) provides for the computation of the basic rate on the average of all earnings during the specified period; § 548.3(c) permits the basic rate to be computed on the basis of the earnings for each particular type of work. Thus, if the employee performs different types of work, each involving a different rate of pay such as different piece-rate, job rates, or a combination of these with hourly rates, a separate basic rate may be computed for each type of work and overtime computed on the basis of the rate or rates appli-

cable to the type of work performed during the overtime hours.

Example. An employee who is paid on a weekly basis with overtime after 40 hours works six 8-hour days in a workweek under an agreement or understanding reached pursuant to this subsection. He performs three different types of piecework, each at a different rate of pay. The basic rates to be used for computing overtime in this situation would be arrived at by dividing the earnings for each type of work by the number of hours during which that type of work was performed. There would thus be three different basic rates, one for each type of work. Since the overtime hours used in this illustration occur on the sixth day, the types of work performed on the sixth day would determine the basic rate or rates on which overtime would be computed that week. Thus, if the average hourly earnings for the three types of work are respectively \$1.70 an hour in type A, \$1.80 an hour in type B, and \$2 an hour in type C, and on the sixth day the employee works on type B, his overtime premium for the sixth day would be one-half the basic rate of \$1.80 an hour, multiplied by the 8 hours worked on that day.

(Sec. 1, 52 Stat. 1060, as amended, 29 U.S.C. 201, *et seq.*)

[20 FR 5681, Aug. 6, 1955, as amended at 32 FR 3293, Feb. 25, 1967]

§ 548.304 Excluding value of lunches furnished.

(a) Section 548.3(d) authorizes as established basic rates:

The rate or rates which may be used under the Act to compute overtime compensation of the employee but excluding the cost of meals where the employer customarily furnishes not more than a single meal per day.

(b) It is the purpose of § 548.3(d) to permit the employer upon agreement with his employees to omit from the computation of overtime the cost of a free daily lunch or other single daily meal furnished to the employees. The policy behind § 548.3(d) is derived from the Administrator's experience that the amount of additional overtime compensation involved in such cases is trivial and does not justify the book-keeping required in computing it. Section 548.3(d) is applicable only in cases where the employer customarily furnishes no more than a single meal a day. If more than one meal a day is customarily furnished by the employer all such meals must be taken into account in computing the regular rate of

¹¹ See §§ 778.200 through 778.225 of this chapter for an explanation of what payments may be excluded.

pay and the overtime compensation due.¹² In a situation where the employer furnishes three meals a day to his employees he may not, under § 548.3(d), omit one of the three meals in computing overtime compensation. However, if an employer furnishes a free lunch every day and, in addition, occasionally pays “supper money”¹³ when the employees work overtime, the cost of the lunches and the supper money may both be excluded from the overtime rates.

[20 FR 5682, Aug. 6, 1955, as amended at 21 FR 338, Jan. 18, 1956]

§ 548.305 Excluding certain additions to wages.

(a) Section 548.3(e) authorizes as established basic rates: “The rate or rates (not less than the rates required by section 6 (a) and (b) of the Act) which may be used under the Act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the Act, would not increase the total compensation of the employee by more than 50 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the Act) in the period for which such additional payments are made.”

(b) Section 548.3(e) permits the employer, upon agreement or understanding with the employee, to omit from the computation of overtime certain incidental payments which have a trivial effect on the overtime compensation due. Examples of payments which may be excluded are: modest housing, bonuses or prizes of various sorts, tuition paid by the employer for the employee’s attendance at a school, and cash payments or merchandise awards for soliciting or obtaining new business. It may also include such things as payment by the employer of the employee’s social security tax.

(c) The exclusion of one or more additional payments under § 548.3(e) must not affect the overtime compensation of the employee by more than 50 cents

a week on the average for the overtime weeks.

Example. An employee, who normally would come within the 40-hour provision of section 7(a) of the Act, is paid a cost-of-living bonus of \$260 each calendar quarter, or \$20 per week. The employee works overtime in only 2 weeks in the 13-week period, and in each of these overtime weeks he works 50 hours. He is therefore entitled to \$2 as overtime compensation on the bonus for each week in which overtime was worked (i.e., \$20 bonus divided by 50 hours equals 40 cents an hour; 10 overtime hours, times one-half, times 40 cents an hour, equals \$2 per week). Since the overtime on the bonus is more than 50 cents on the average for the 2 overtime weeks, this cost-of-living bonus would not be excluded from the overtime computation under § 548.3(e).

(d) It is not always necessary to make elaborate computations to determine whether the effect of the exclusion of a bonus or other incidental payment on the employee’s total compensation will exceed 50 cents a week on the average. Frequently the addition to regular wages is so small or the number of overtime hours is so limited that under any conceivable circumstances exclusion of the additional payments from the rate used to compute the employee’s overtime compensation would not affect the employee’s total earnings by more than 50 cents a week. The determination that this is so may be made by inspection of the payroll records or knowledge of the normal working hours.

Example. An employer has a policy of giving employees who have a perfect attendance record during a 4-week period a bonus of \$10. The employee never works more than 50 hours a week. It is obvious that exclusion of this attendance bonus from the rate of pay used to compute overtime compensation could not affect the employee’s total earnings by more than 50 cents a week.¹⁴

(e) There are many situations in which the employer and employee cannot predict with any degree of certainty the amount of bonus to be paid at the end of the bonus period. They may not be able to anticipate with any degree of certainty the number of hours an employee might work each

¹² See § 531.37 of this chapter.

¹³ See § 778.217(b)(4) of this chapter.

¹⁴ For a 50-hour week, an employee’s bonus would have to amount to \$5 a week to affect his overtime compensation by 50 cents.